

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3849 of 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 TO 5 - NO

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RABARI RAMJI UKA POA OF MANUBEN RAMJI

Versus

EXECUTIVE ENGINEER

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Appearance:

SUO MOTU for Petitioner

MR HL JANI AGP for Respondent No. 1, 2

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CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 16/09/97

ORAL JUDGEMENT

This petition arises of a complaint lodged by the petitioner before the Chief Justice of this court. The said complaint, received in this court on 30th April, 1997, has been treated as a writ petition and a suo-motu notice was issued by this court upon the respondents.

The petition was also referred to the High Court Legal Aid Committee and the Committee was requested to provide legal assistance to the petitioner. Accordingly, learned advocate Mr. M.K.Patel has been appointed to assist the petitioner and has appeared before this court.

2. The petitioner is a widow of one Shri Ramji Uka who was serving as a Labourer on daily wages in the office of the respondents herein. Said Ramji Uka served as a Labourer on daily wages since the month of May, 1982 and died some time in the month of October, 1992. He has served as a Labourer till 8th October, 1992. It is the claim of the petitioner that in view of 10 years' service of late Shri Ramji Uka, the petitioner being his widow, is entitled to family pension for the services rendered by late Shri Ramji Uka. However, her claim for family pension has not been considered by the respondents.

3. In response to the notice issued by this court, the respondents have appeared through the learned AGP Mr. H.L.Jani. A counter-affidavit has also been filed by the respondents herein. The respondents have relied upon the Government Resolution dated 7th March, 1991. Under the said Resolution, the service rendered on daily wages has been considered to be a pensionable service. It is resolved that if a daily wager completes 10 years' service as such, he shall be entitled to pension and other retiral benefits for such pensionable service. It is further provided that for considering the service as a pensionable service, the daily wager concerned shall have performed duty for atleast 240 days including the days of leave admissible to him in a given year i.e. the year in which a daily wager has completed 240 days' service including the days of admissible leave, is considered to be a completed year of pensionable service. The respondent No.3 has placed on the record a statement showing the number of days the late Shri Ramji Uka served under the respondent No.3 in each year. It appears that in the years 1982-1983 and in the year 1992, said Ramji Uka did not perform duties for 240 days. Thus, late Ramji Uka had served for 9 years, which can be considered to be completed years of service for the purpose of grant of pension under the aforesaid Resolution. Thus, the late Ramji Uka had not completed 10 years' pensionable service, as provided in the above referred Resolution dated 7th March, 1991, the petitioner, therefore, can not claim family pension for the services rendered by the

late Ramji Uka.

3. It is well established that the service rendered on daily wages is not considered to be pensionable service except under the above referred Resolution. The terms and conditions provided therein must be strictly adhered to for allowing a person to receive retiral benefits. In the present case, the petitioner's late husband Ramji Uka had not completed 10 years' pensionable service, which should entitle the petitioner to receive family pension. The rejection of the claim of the petitioner for family pension is in consonance with the provisions contained in Government Resolution dated 7th March, 1991, and can not be interfered with. The petitioner may, however, apply for condonation of defect in pensionable service and if such an application is made, same should be considered in accordance with law and expeditiously.

4. Subject to the above observation, the petition is summarily rejected. Notice is discharged. Registry is directed to send a copy of this order to the petitioner.

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JOSHI